

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

ESTATE OF ROGER OWNENSBY JR., et al	:	(Judge Spiegel)
	:	
Plaintiff,	:	Case No. 01-CV-769
	:	
vs.	:	
	:	
CITY OF CINCINNATI, ET AL.,	:	<u>DEFENDANTS' MOTION TO CERTIFY ISSUES TO SIXTH CIRCUIT COURT OF APPEALS</u>
Defendants	:	

Now come Defendants and hereby move the Court to certify to the Sixth Circuit Court of Appeals the failure to train issue and to reconsider its denial of certification of the Ohio Revised Code 2744 Sovereign Immunity issue, pursuant to 28 U.S.C. §1292. The grounds for this Motion are set forth more fully in the attached Memorandum in Support.

MEMORANDUM IN SUPPORT

This case involves Federal and State tort claims related to the death of Plaintiffs' decedent Roger Owensby, Jr. after the decedent resisted arrest on November 7, 2000. The Court's decision granting partial summary judgment to Plaintiffs on the issues of delay in providing medical care, failure to train and the constitutionality of O.R.C. §2744 have been appealed to the Sixth Circuit Court of Appeals by Defendants. Defendants seek pendent jurisdiction on the issues of failure to train and the constitutionality of O.R.C. §2744.

The Defendants' original request to certify the O.R.C. §2744 issue was fully briefed Doc. No. 118, Defendants City of Cincinnati and Police Chief Thomas Striecher,

Jr.'s Motion for Reconsideration of March 25, 2004 Order Overruling Summary Judgment on Sovereign Immunity; Request to Certify Question to Ohio Supreme Court Regarding Revised Code 2744's Constitutionality; Alternative Motion to Certify Conflict to Sixth Circuit Court of Appeals, filed on March 31, 2004 and in Defendants' Reply in Support of Motion for Reconsideration, filed on April 14, 2004, Doc. No. 127.

In short, the Interlocutory Appeals Act of 1958, 28 U.S.C. §1292(b), was enacted to meet the recognized need for prompt review of certain non-final orders. Coopers & Lybrand v. Livesay, 437 U.S. 463, 475, 98 S. Ct. 2454 (1978). This statute allows the Court of Appeals to review non-final orders immediately which involve a controlling question of law; or which involve substantial grounds for differences of opinion; or where immediate appeal may materially advance the ultimate termination of the litigation. 28 U.S.C. §1292(b). In the case at bar, the Court's decision overruling summary judgment on the plaintiffs' state tort claims involves the requisite exceptional circumstances to warrant certifying the issues to the Sixth Circuit.

The Court's decision denying the Defendants' motion to certify, filed on May 20, 2004, Doc. No. 156, was based on judicial efficiency. Doc. No. 156, p.7. If the other issues had not been appealed, the interests of judicial economy might continue to be served by denial of certification. However, now that the other issues have been appealed and the Sixth Circuit has overruled Plaintiff's Motion to Dismiss the appeal, judicial economy is no longer served by the Court's refusal to certify either issue to the Sixth Circuit. In fact, judicial economy would be furthered, rather than impeded, by the Court's certification of both issues in order that all of the appealable issues be resolved at this juncture.

WHEREFORE, Defendants respectfully move this Court for an Order certifying the issues of failure to train and the constitutionality of R.C. 2744 to the Sixth Circuit Court of Appeals.

Respectfully submitted,

JULIA L. McNEIL (0043535)
City Solicitor

~~/s/ Geri Hernandez Geiler~~
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**CERTIFICATE OF SERVICE
BY ELECTRONIC FILING**

I hereby certify that on December 9, 2004, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the attorneys of record listed below.

~~/s/ Geri Hernandez Geiler~~
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